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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/672,322	09/26/2003	Dale E. Brandt	092366-9002-00	8411
23409	7590	02/08/2005	EXAMINER	
MICHAEL BEST & FRIEDRICH, LLP 100 E WISCONSIN AVENUE MILWAUKEE, WI 53202				SHAFER, RICKY D
ART UNIT		PAPER NUMBER		
				2872

DATE MAILED: 02/08/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	10/672,322	BRANDT, DALE E.	
	Examiner Ricky D. Shafer	Art Unit 2872	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM  
 THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1) Responsive to communication(s) filed on 26 March 2004.  
 2a) This action is FINAL.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4) Claim(s) 1-16 is/are pending in the application.  
 4a) Of the above claim(s) 15 and 16 is/are withdrawn from consideration.  
 5) Claim(s) 6-14 is/are allowed.  
 6) Claim(s) 1-5 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date <u>01/29/2004</u> .	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: _____

**DETAILED ACTION**

1. In view of the papers filed March 26, 2004, it has been found that this nonprovisional application, as filed, through error and without deceptive intent, improperly set forth the inventorship, and accordingly, this application has been corrected in compliance with 37 CFR 1.48(a). The inventorship of this application has been changed by the addition of Leo Spychalla.

The application will be forwarded to the Office of Initial Patent Examination (OIPE) for issuance of a corrected filing receipt, and correction of Office records to reflect the inventorship as corrected.

2. Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-14, drawn to a rear view mirror assembly comprising a frame, a mirror supported by the frame and having a first mirror section and a second mirror section movably coupled to the first mirror section, the second mirror section having an inner mirror portion adjacent the first mirror section and an outer mirror portion opposite the inner mirror portion; a cam mechanism supporting the outer mirror portion and including a mirror cam connected to the second mirror section and defining a first cam surface, and a frame cam connected to the frame and defining a second cam surface, and a linear drive mechanism supported by the frame and connected to the cam mechanism to move the first cam surface relative to the second cam surface, classified in class 359, subclass 865.
- II. Claim 15, drawn to a rear view mirror assembly comprising a frame, a mirror supported by the frame and having a first mirror section and a second mirror

section pivotally coupled to the first mirror section, the second mirror section having an inner mirror portion adjacent the first mirror section and an outer mirror portion positioned opposite the inner mirror portion; an adjustment mechanism supported by the frame for rotation relative to the frame; an arm connected to the adjustment mechanism and supporting the second mirror section, a first connection means for transferring rotational movement of the adjustment mechanism into linear movement of the arm; and a second connection means for transferring linear movement of the arm into pivotal movement of the arm, the second mirror section pivoting relative to the first mirror section in response to pivotal movement of the arm, classified in class 359, subclass 865.

III. Claim 16, drawn to a method of adjusting a rear view mirror having a first mirror section and a second mirror section pivotally coupled to the first mirror section, the method comprising the acts of: rotating a screw drive relative to a frame; translating an arm in response to rotating the screw drive as the screw drive engages the arm; pivoting the arm in response to translating the arm as a first cam surface engages a second cam surface, and pivoting the second mirror section relative to the first mirror section in response to pivoting the arm, classified in class 359, subclass 865.

3. The inventions are distinct, each from the other because of the following reasons:  
Inventions I and II are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct from each other if they are shown to be separately usable. In the instant case, each of the inventions has separate utility such as a rear

view assembly with the separate details of the other invention. For example, the rear view mirror assembly of invention I has separate utility as a rear view mirror assembly without a first connection means for transferring rotational movement of an adjustment mechanism into linear movement of an arm and a second connection means for transferring linear movement of the arm into pivotal movement of the arm of group II; and the rear view mirror assembly of invention II has separate utility as a rear view mirror assembly without a cam mechanism including a mirror cam connected to the second mirror section and defining a first cam surface, and a frame cam connected to the frame and defining a second cam surface of group I. See MPEP § 806.05(d).

Inventions III and [I, II] are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). In this case, the process as claimed can be practiced by another materially different apparatus, such as an apparatus without a mirror supported by a frame, a cam mechanism including a mirror cam connected to the second mirror section, a frame cam connected to the frame, a linear drive mechanism supported by the frame and connected to the frame, an arm including an inner arm end having a threaded surface, an adjustment mechanism supported by the frame or an arm connected to the adjustment mechanism.

4. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated below is proper.

The search required for invention I would further require a search in class 248, subclass 478 and 486 which would not be required for inventions II and III; and the search required for invention III would further require a search in class 359, subclass 900 which would not be required for inventions I and II.

5. During a telephone conversation with Mr. David Smith on January 28, 2005 a provisional election was made with traverse to prosecute the invention of group I, claims 1-14. Affirmation of this election must be made by applicant in replying to this Office action. Claims 15 and 16 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

6. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 1-5 are rejected under 35 U.S.C. 102(b) as being anticipated by Brandt ('781).

Brandt discloses a rear view mirror assembly comprising a frame (10), a mirror (18, 20) supported by the frame and having a first mirror section (18) and a second mirror section (20) movably coupled to the first mirror section, the second mirror section having an inner mirror

portion adjacent the first mirror section and an outer mirror portion opposite the inner mirror portion; a cam mechanism (24) supporting the outer mirror portion and including a mirror cam [the free (threaded) end of pin 26] connected to the second mirror section and defining a first cam surface, and a frame cam [the free (threaded) end of pin 26] connected to the frame and defining a second cam surface, a linear drive mechanism (30) supported by the frame and connected to the cam mechanism to move the first cam surface relative to the second cam surface, a joint (22) movably coupling the second mirror section to the first mirror section for movement relative to the first mirror section, the joint supporting the inner mirror portion and a biasing member (32) connected to the second mirror section and biasing the first cam surface toward the second cam surface, wherein the linear drive mechanism includes a screw drive that rotates about a rotational axis and wherein the second mirror section pivots relative to the first mirror section in response to translational movement of the linear drive mechanism. Note Fig. 2 along with the associated description thereof.

9. Claims 6-14 are allowed.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ricky D. Shafer whose telephone number is (571) 272-2320. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about

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the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

RDS

February 06, 2005

*Ricky D. Shafer*  
RICKY D. SHAFER  
PRIMARY EXAMINER  
~~GROUP 2500~~  
ART UNIT 2872